IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

CRP.No. 1014 of 2007()

AGAINST THE ORDER DATED 26/06/2007 IN EP 2401/04 IN OS.696/1999 of PRL.M.C.,IRINJALAKUDA
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REVN. PETITIONER: PETITIONERS/JUDGEMENT DEBTORS
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1. **NANDINI, W/O.RAGHUPATHI, S/O.KANATTIL NARAYANAN, KOTTANELLOOR DESAM, VELOOKKARA VILLAGE, MUKUNDAPURAM TALUK.**

2. **RAGHUPATHI, S/O.KANATTIL NARAYANAN, KOTTANELLOOR DESAM, VELOOKKARA VILLAGE, MUKUNDAPURAM TALUK.**

3. **SURESH, S/O.POOVATHUMKADAVIL RAMAN, MANIYANKKUVU DESOM, PUTHANCHIRA, MUKUNDAPURAM TALUK.**

BY ADV. SRI.K.S.RAJESH
SRI.M.SHAJU PURUSHOTHAMAN

RESPONDENTS: DECREE HOLDERS
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1. **RAVEENDRAN MENON (DIED), S/O.UNNIPARAMBATH DEVAKI AMMA, LAKAMALESWARAM VILLAGE, KODUNGALLUR TALUK, PROPRIETOR OF AKSHAYA FINANCIAL ENTERPRISES, VELLANGALLOOR DESAM, MUKUNDAPURAM TALUK.**
LEGAL HEIRS:

2. **AMBIKA, W/O.RAVEENDRAN MENON (DIED), S/O.UNNIPARAMBATH DEVAKI AMMA, LAKAMALESWARAM VILLAGE, KODUNGALLUR TALUK, PROPRIETOR OF AKSHAYA FINANCIAL ENTERPRISES, VELLANGALLOOR DESAM, MUKUNDAPURAM TALUK.**

3. SMITHA MENON, D/O.RAVEENDRAN MENON (DIED), S/O.UNNIPARAMBATH DEVAKI AMMA, LAKAMALESWARAM VILLAGE, KODUNGALLUR TALUK, PROPRIETOR OF AKSHAYA FINANCIAL ENTERPRISES, VELLANGALLOOR DESAM, MUKUNDAPURAM TALUK.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21/11/2007 ALONG WITH CRP 1015/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NOs. 1014 & 1015 OF 2007

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Dated this the 21st day of November, 2007.

O R D E R

These revision petitions are preferred against the order of the learned Munsiff, Irinjalakuda in E.P.2401/04 and E.P.2392/04 respectively. A preliminary objection was raised contending that the execution petition is not maintainable for the reason that a succession certificate has not been produced along with the execution application. It is a case where subsequent to the filing of the execution petition a succession certificate has been produced and the matter is pending. I have considered a similar issue in CRP 902/07 and had referred to the decision of this Court in ***Vally v. Madhavan, 1970 KLJ 312.*** This Court held that "Section 214(1)(b) is the provision that would apply to a case of an application by the legal representative to execute a decree. That Section does not prohibit the entertainment of an

application for execution by a Court if a succession certificate is not produced along with such application. It only prohibits the Court from proceeding with the execution against the judgment debtor upon an application by the legal representative of the deceased decree holder except on the production of the succession certificate or other certificates mentioned in that section." This Court also pointed out that the wordings of Section should have been 'no Court shall entertain' in the place of 'no Court shall proceed' if the intention was contra. So in the light of the said decision the execution application can be filed without production of a succession certificate but the Court can proceed with the execution application to give an effective result only on production of the succession certificate. Therefore, the orders under challenge cannot be set aside and they have to be confirmed. So, both the C.R.Ps. are dismissed.

2. It is also made clear that if the petitioners are inclined to pay the amount in a reasonable time, they can

make such request to the Court where the execution petition is pending and the Court can consider the request after hearing the decree holder.

M.N. KRISHNAN, JUDGE.

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